IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.525 OF 1995.

Mohamed Hussein Zulphekari
& ors. : Appellants.

versus

The Municipal Corporation of
Greater Bombay, Bombay. : Respondent.

Mr.V.T.Walawalkar with Mr.H.A.Sayed for the appellants.
None for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 22nd February 2005.

ORAL ORDER

1. Heard advocate for the appellants. Nobody is present for the respondent-corporation. When the matter had appeared before me on last occasion I asked Mr.Walawalkar to give notice to the Municipal Corporation looking to the issue

involved. He has made a statement that he has given the notice for today to the Municipal Corporation. Nobody is appearing for the respondent.

2. The appellants are the original plaintiffs. They had filed a suit against the Bombay Municipal Corporation before the City Civil Court. That suit came to be dismissed by the Judge by his order dated 20th June 1995 only on the ground that the plaintiffs could not have instituted the suit without issuing pre-suit statutory notice as required under Section 527 of the Bombay Municipal Corporation Act.

3. Only question involved in this case is, whether, in the circumstances of this particular case, giving of such notice was obligatory and mandatory on the part of the plaintiffs. Counsel for the appellants contended that the suit came to be filed in view of the threatened proposed action of the Bombay Municipal Corporation and it was not in respect of any completed act. He relied upon number of judgments in this regard. These are; **AIR 1927 Madras 166 (K.R.Muthu A.R. Arunachalam Chetty v. David Esq. The Official**

Receiver Ramnand Dist. & ors); 1904 Bom.L.R. 1028 (Vol.VI) (Dewakabai v/s. The Municipal Corporation of Bombay) and; AIR 1924 Bombay 1 (Bhagchand Dagadusha Gujarati & ors. v/s. Secretary of State of India & Anr.).

. In all the aforesaid judgments it has been held that if cause of action requires an immediate remedy by way of injunction and if Section 80 of the Code of Civil Procedure is literally applied the party aggrieved would have no remedy.

. It has been held by the Madras High Court in the case of Arunachalam Chetty v. Official Receiver that threatened acts in future are not covered by statutory bar of giving pre-suit notice.

4. Looking to the constant view, the impugned order has to be set aside. Hence I pass the following order :-

:ORDER:

The Appeal is allowed.

The impugned order of dismissal of the suit for want of statutory notice is set aside and quashed and, the suit is restored to file for decision according to law within nine months from the date of communication of this order.

No order as to costs.

[D.G.DESHPANDE]

22/02/2005 JUDGE.